

IC 25-34.1-7

Chapter 7. Real Estate Recovery Fund

IC 25-34.1-7-1

Sec. 1. (a) The real estate recovery fund is established for the purpose set out in this chapter. The fund shall be administered by the real estate commission.

(b) The treasurer of state shall invest the money in the fund not currently needed to meet the obligations of the fund in the same manner as other public funds may be invested. Interest that accrues from these investments shall be deposited in the fund.

(c) Money in the fund at the end of a state fiscal year does not revert to the state general fund, except as provided in section 2.1 of this chapter.

As added by P.L.255-1987, SEC.6. Amended by P.L.143-1990, SEC.9.

IC 25-34.1-7-2

Sec. 2. (a) If the total amount in the real estate recovery fund (including principal and interest) is less than four hundred fifty thousand dollars (\$450,000) on June 30 in an odd-numbered year after the payment of all claims and expenses, the real estate commission shall assess a surcharge according to the following formula in order to maintain the fund at an approximate level of six hundred thousand dollars (\$600,000):

STEP ONE: Determine the amount remaining in the fund on June 30 of the current year after all expenses and claims have been paid.

STEP TWO: Subtract the amount determined under STEP ONE from six hundred thousand dollars (\$600,000).

STEP THREE: Determine the number of licensees who had licenses in effect on June 30 of the current year.

STEP FOUR: Divide the number determined under STEP TWO by the number determined under STEP THREE.

(b) The real estate commission shall assess the surcharge described in subsection (a) against each licensee who:

- (1) receives an initial license; or
- (2) receives a renewal license.

(c) The real estate commission shall assess the surcharge described in subsection (a) for the two (2) year period beginning on July 1 of the current year through June 30 of the next odd-numbered year.

(d) The surcharge assessed under this section is in addition to any other fee under this article.

(e) This section does not apply to a person who:

- (1) receives an initial license or certificate; or
- (2) receives a renewal license or certificate;

under the real estate appraiser licensure and certification program established under IC 25-34.1-3-8.

As added by P.L.255-1987, SEC.6. Amended by P.L.143-1990, SEC.10; P.L.183-1991, SEC.9.

IC 25-34.1-7-2.1

Sec. 2.1. If the total amount in the real estate recovery fund (including principal and interest) exceeds seven hundred fifty thousand dollars (\$750,000) at the end of a state fiscal year after the payment of all claims and expenses, the amount in excess of seven hundred fifty thousand dollars (\$750,000) reverts to the state general fund.

As added by P.L.143-1990, SEC.11.

IC 25-34.1-7-3

Sec. 3. Any interest earned on investment of money in the real estate recovery fund shall be credited at least annually to the fund. No money may be appropriated from the general fund for payment of any expenses incurred under this chapter, and none of these expenses may be charged against the state.

As added by P.L.255-1987, SEC.6.

IC 25-34.1-7-4

Sec. 4. (a) If any aggrieved person obtains a final judgment in any court against a licensee to recover damages for any act of:

- (1) embezzlement of money or property; or
- (2) unlawfully obtaining money or property by false pretenses, use of a device, trickery, or forgery;

that results in an actual cash loss to the aggrieved person (as opposed to loss in market value), the person may, upon termination of all proceedings including appeals and proceedings supplemental to judgment for collection purposes, file a verified application in the court in which the judgment was entered for an order directing payment out of the real estate recovery fund of the amount of actual and direct loss in the transaction that remains unpaid upon the judgment. The amount of actual and direct loss may include court costs but may not include attorney's fees or punitive damages awarded. The amount that may be paid from the real estate recovery fund may not exceed twenty thousand dollars (\$20,000) per judgment and an aggregate lifetime limit of fifty thousand dollars (\$50,000) with respect to any one (1) licensee.

(b) This section applies only to a final judgment that awards damages for an act by the licensee described in subsections (a)(1) through (a)(2) that arises directly out of any transaction:

- (1) that occurred when the licensee was licensed;
- (2) for which a license was required under IC 25-34.1; and
- (3) that occurred after December 31, 1987.

As added by P.L.255-1987, SEC.6.

IC 25-34.1-7-5

Sec. 5. (a) If the payment in full of two (2) or more pending valid claims that have been filed by aggrieved persons against a single licensee would exceed the fifty thousand dollar (\$50,000) limit set forth in section 4 of this chapter, the fifty thousand dollars (\$50,000) shall be distributed among the aggrieved persons in the ratio that their respective claims bear to the aggregate of all valid claims or in any other manner that a court of record may determine equitable. This money shall be distributed among the persons entitled to share in it

without regard to the order of priority in which their respective judgments have been obtained or their claims have been filed.

(b) Upon petition of the commission, the court may require all claimants and prospective claimants against one (1) licensee to be joined in one (1) action, to the end that the respective rights of all the claimants to the commission may be equitably adjudicated and settled.

(c) On June 30 and December 31 of each year, the real estate commission shall identify each claim that the court orders to be paid during the six (6) month period that ended on that day. The commission shall pay the part of each claim that is so identified within fifteen (15) days after the end of the six (6) month period in which the claim is ordered paid. However, if the balance in the fund is insufficient to pay the full payable amount of each claim that is ordered to be paid during a six (6) month period, the commission shall pay a prorated portion of each claim that is ordered to be paid during the period. Any part of the payable amount of a claim left unpaid due to the prorating of payments under this subsection must be paid (subject to the fifty thousand dollar (\$50,000) limit described in section 4 of this chapter) before the payment of claims ordered to be paid during the following six (6) month period.

As added by P.L.255-1987, SEC.6.

IC 25-34.1-7-6

Sec. 6. Any broker or salesperson who is licensed or renews a license under this article after December 31, 1987, and upon whom personal service cannot be made with reasonable diligence shall be considered to have appointed the commission as the licensee's agent for service of process for purposes of actions filed under section 4 of this chapter for recovery from the real estate recovery fund. Service of process under this section shall be made as nearly as practicable in the manner prescribed by the Indiana Rules of Trial Procedure for service on corporations.

As added by P.L.255-1987, SEC.6.

IC 25-34.1-7-7

Sec. 7. An order for payment from the real estate recovery fund may not be issued unless the action to recover from the real estate recovery fund was commenced within one (1) year after the termination of all proceedings against the licensee for embezzlement of money or property, or unlawfully obtaining money or property by false pretenses, use of a device, trickery, or forgery, including appeals and proceedings supplemental to judgment. When any person commences an action for a judgment that may result in an order for payment from the fund, the person shall notify the commission in writing of the commencement of the action.

As added by P.L.255-1987, SEC.6.

IC 25-34.1-7-8

IC 25-34.1-7-8 Sec. 8. When any person files an application for an order directing payment from the real estate recovery fund, the

commission shall be made a party defendant to the proceedings. The court shall conduct a hearing on the application, and it may issue an order directing payment out of the real estate recovery fund, as provided in section 9 of this chapter, subject to the limitation of section 4 of this chapter, if the court finds:

- (1) that there is no collusion between the judgment creditor and the judgment debtor;
- (2) that the judgment creditor is making application not more than one (1) year after the termination of all proceedings in connection with the judgment, including appeals and proceedings supplemental to judgment for collection purposes;
- (3) that the judgment creditor has caused to be issued a writ of execution on the judgment and the officer executing the writ has made a return showing that no personal or real property of the judgment debtor liable to be levied upon in satisfaction of the judgment could be found or that the amount realized on the sale under the execution was insufficient to satisfy the judgment;
- (4) that the judgment creditor has diligently pursued the creditor's remedies against all the judgment debtors and all other persons liable to the creditor in the transaction for which the creditor seeks recovery from the real estate recovery fund;
- (5) that the embezzlement of money or property, or the unlawfully obtaining of money or property by false pretenses, use of a device, trickery, or forgery, arose directly out of a transaction that occurred when the judgment debtor was licensed and acted in a capacity for which a license is required under this article and that the transaction occurred after December 31, 1987; and
- (6) that, in the event of a default judgment or a judgment entered upon stipulation of the parties, the judgment debtor's acts constituted embezzlement of money or property, or the unlawful obtaining of money or property by false pretenses, use of a device, trickery, or forgery.

As added by P.L.255-1987, SEC.6.

IC 25-34.1-7-9

Sec. 9. Upon a final order of the court directing that payment be made out of the real estate recovery fund, the commission shall, subject to sections 4 through 5 of this chapter, make the payment out of the real estate recovery fund as provided in section 5 of this chapter.

As added by P.L.255-1987, SEC.6.

IC 25-34.1-7-10

Sec. 10. If the commission is required to make any payment from the real estate recovery fund in settlement of a claim or toward the satisfaction of a judgment under this chapter, the commission shall suspend the judgment debtor's license and, if the judgment debtor is licensed under IC 25-34.1-3-3.1, the license of the individual designated broker, under this article. The licensee is not eligible to be licensed again as either a broker or a salesperson until the licensee has repaid in full the amount paid from the real estate recovery fund with interest of twelve percent (12%) per annum.

As added by P.L.255-1987, SEC.6.

IC 25-34.1-7-11

Sec. 11. When upon order of any court, the commission has caused payment to be made from the real estate recovery fund to a judgment creditor, the commission is subrogated to the rights of the judgment creditor with respect to the amount paid.

As added by P.L.255-1987, SEC.6.

IC 25-34.1-7-12

Sec. 12. Subject to the approval of the budget agency, the real estate commission may expend the interest earned by the real estate recovery fund for:

- (1) information concerning the commission's activities and administrative rulings;
- (2) other educational information concerning the real estate industry; and
- (3) expenses related to the continuing education program under IC 25-34.1-9.

As added by P.L.255-1987, SEC.6. Amended by P.L.120-1992, SEC.2.

IC 25-34.1-7-13

Sec. 13. (a) The office of the attorney general shall provide the staff assistance necessary to:

- (1) enable the real estate commission to perform its duties under this chapter; and
- (2) enforce this chapter.

(b) Expenses incurred by the office of the attorney general under this section shall be paid from the real estate recovery fund.

As added by P.L.255-1987, SEC.6.